

## REMARKS/ARGUMENTS

Claims 4, 7-9, 15-16, and 21-43 are pending in this application. Claims 4, 7-9, 15-16, and 37-43 are currently under examination. Claims 21-36 were withdrawn from consideration by the Examiner in the October 23, 2002 Office Action (although no mention of claims 21-36 appears in the May 7, 2003 Office Action). Claims 4, 7-9, 15-16, and 37-41 have been rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,286,046 (Bryant). Claims 42 and 43 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Bryant in view of U.S. Patent No. 6,078,956 (Bryant, et al.).<sup>1</sup>

A telephonic interview between the undersigned and Examiner Jacobs was held on July 22, 2003. During the interview, claims 4, 7, 8, and 9 were discussed, and the Bryant reference (the 046 patent) was also discussed. With regard to each of the claims discussed, the following is the result of the interview:

- With regard to claim 4, no agreement was reached.
- With regard to claims 7 and 8, it was agreed that Bryant does not teach the features of “wherein the recorded information indicative of said second client request is a function of said response” (claim 7) or “wherein said function takes into account the relative location of one of said hyperlinks on said web page” (claim 8). However, although the Examiner agreed that Bryant does not teach this feature, the Examiner did not agree that claims 7 and 8 are patentable because of the possibility that a further search would reveal a different reference that discloses this feature.

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<sup>1</sup> Although the 046 and 956 patents are separate patents, both list Bryant as the first inventor. In the Office Action, the Examiner appears to refer to the 046 patent as “Bryant,” and to the 956 patent as “Bryant, et al.,” so applicants shall adopt the same convention in this paper.

- With regard to claim 9, the Examiner appeared to concur with the undersigned's position that Bryant does not teach the feature of "recording the time between the first and second client requests," but left open the possibility that further consideration by the Examiner would result in disagreement upon this point.

Since full agreement as to the disposition of the claims was not reached, applicants have set forth their positions on the claims below.

As to claim 4, applicants argued during the interview that Bryant teaches, at most, the transmission of a request, and not the *re-transmission* of a request that has previously been transmitted. Nor does Bryant teach the feature of "simulating a user interaction," as recited in claim 4. Since Bryant does not teach these features, the section 102(e) rejection of claim 4 should be withdrawn.

As to claim 7, applicants argued during the interview that, while Bryant may record information about a first request, Bryant does not teach that the information recorded about a *second* client request is a function of a response that has already been received to the *first* client request. The portions of Bryant onto which the Examiner has read this claim feature (Bryant, col. 5, ll. 27-35 and col. 7, ll. 31-52) discuss the recording of information about a *response to a request* (i.e., the "response time"), not the recording of information about a *request*. Additionally, nowhere does Bryant teach that the information recorded about a request is a *function of* a previously-received response. During the interview, the Examiner agreed with this point.

Regarding claim 8, applicants argued – and the Examiner agreed – that Bryant does not teach the feature of recording information about a request as a “function [that] takes into account the relative location of one of said hyperlinks on [a] web page,” where the “web page” was previously received as a response. As discussed in the interview, one feature described in the specification of the present application is that, when a user follows a link on a web page which results in generating a request for the URL named in the link, the following of the link is not recorded merely as a request for the specified URL, but rather as the following of a particular link on a page. (See Application, p. 18, lines 2-20.) Thus, if the user follows, say, the third link listed on a page, the fact that the user followed the third link on the page is recorded. When the transaction is replayed, a web page will be received (e.g., in response to a first request), and the transaction re-player can follow the third link on this web page (where the “second request” is for whatever web page is named in the third link). Since the content of web pages tends to change over time, the web page received during the replay session – as well as the third link on that page – may be different than it was when the transaction was recorded. This technique allows an Internet transaction to be recorded (and replayed) in a manner that more truly reflects the way that a human user would use the Internet (e.g., by following links on previously-received pages).

It should be noted that recording a relative location of a link on a web page (as recited in claim 8) is a specific case of recording a request as a “function” of a previously-received response (as recited in claim 7, and discussed above).

Regarding claim 9, applicants pointed out during the interview that Bryant teaches recording a “response time,” and does not teach the recording of a time between two requests, as called for by claim 9. Bryant’s recording of a response time appears to be directed to performance measurement (i.e., measuring how long it takes the network to respond to a request). However, recording the time between two requests, as recited in claim 9, is directed to the recording of details about a transaction that will allow the transaction to be reproduced in a way that more accurately imitates how a human user would behave. In the case of claim 9, the time between user requests is recorded so that, during replay of the transaction, the spacing of successive requests can be timed to reflect the rhythm with which a real user engages in an Internet transaction.

Thus, claims 4 and 7-9 have been shown to recite features that are not in the Bryant reference, and thus the section 102(e) rejection of claims 4 and 7-9 over Bryant should be withdrawn. Moreover, as discussed in applicants’ February 24, 2003 response to the prior Office Action, claims 15-16 and 37-43 either recite features similar to those discussed above, and/or are dependent on one of claims 4, 7, 8, or 9. (For the sake of brevity, the similarities and dependencies among the various claims – which is discussed at length in the February 24, 2003 paper – is not repeated here.) Thus, for the reasons discussed in the February 24, 2003 paper, claims 15-16 and 37-43 are also patentable over the prior art cited by the Examiner.

Applicants submit that the foregoing remarks are fully responsive to the May 7, 2003 Office Action, and that these remarks also meet the requirement to summarize the telephonic interview under 37 C.F.R. § 1.133(b). °

Conclusion

It is clear from the foregoing discussion that each of claims 4, 7-9, 15-16, and 37-43 recites or incorporates features that are not taught by Bryant. Since the rejection of all of these claims is based on the Examiner's finding that Bryant teaches features that have been demonstrated during the interview – and above in writing – to be absent from that reference, applicant submit that the rejection of these claims must be withdrawn, and this case should be allowed.

During the interview, the Examiner indicated that the claims might not be patentable because a further search might reveal additional prior art that teaches the features of the pending claims. Examination should proceed on the basis of a "clear issue" developed between applicants and the Examiner (MPEP 706.07), and the MPEP recognizes that "[s]witching ... from one set of references to another by the examiner in rejecting in successive actions claims of substantially the same subject matter ... will ... tend to defeat" this goal. (*Id.*). Since this paper does not amend the claims, applicants submit that it would not only change the issue that has developed, but would also unduly burden and delay examination of this application – which has been pending for nearly four years – to now require applicants to distinguish the same claims over a new round of prior art. However, if the Examiner does conduct a new search and apply new prior art, applicants submit that any further Office Action should be non-final so that applicants will have an adequate opportunity to respond to any new issues raised.

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